

### § 413. Tests of innovative procurement methods and procedures

(a) The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. In developing any program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

- (1) ascertain the need for and specify the objectives of such program;
- (2) develop the guidelines and procedures for carrying out such program and the criteria to be used in measuring the success of such program;
- (3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under such program;
- (4) select the appropriate executive agencies or components of executive agencies to carry out such program;
- (5) specify the categories and types of products or services to be procured under such program; and
- (6) develop the methods to be used to analyze the results of such program.

A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such program.

(b) If the Administrator determines that it is necessary to waive the application of any provision of law in order to carry out a proposed program to test innovative procurement methods and procedures under subsection (a) of this section, the Administrator shall transmit notice of the proposed program to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and request that such committees take such action as may be necessary to provide that such provision of law does not apply with respect to the proposed program. The notification to Congress shall include a description of the proposed program (including the scope and purpose of the proposed program), the procedures to be followed in carrying out the proposed program, the provisions of law affected and any provision of law the application of which must be waived in order to carry out the proposed program, and the executive agencies involved in carrying out the proposed program.

(Pub. L. 93-400, §15, as added Pub. L. 98-191, §7, Dec. 1, 1983, 97 Stat. 1329; amended Pub. L. 104-201, div. A, title X, §1074(f)(2), Sept. 23, 1996, 110 Stat. 2661.)

#### PRIOR PROVISIONS

A prior section 15 of Pub. L. 93-400 amended sections 474, 481, and 487 of former Title 40, Public Buildings, Property, and Works.

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-201 struck out after first sentence “The innovative procurement methods and procedures tested under this subsection shall be consistent with the policies set forth in section 401 of this title.”

#### CHANGE OF NAME

Committee on Government Operations of House of Representatives treated as referring to Committee on

Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

#### TEST PROGRAM FOR EXECUTIVE AGENCIES

Pub. L. 103-355, title V, §5061, Oct. 13, 1994, 108 Stat. 3352, as amended by Pub. L. 104-106, div. D, title XLIII, §4302(a), Feb. 10, 1996, 110 Stat. 658; Pub. L. 105-85, div. A, title VIII, §850(f)(1), Nov. 18, 1997, 111 Stat. 1849, provided that:

“(a) IN GENERAL.—The Administrator for Federal Procurement Policy (in this section referred to as the ‘Administrator’) may conduct a program of tests of alternative and innovative procurement procedures. To the extent consistent with this section, such program shall be conducted consistent with section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413). No more than 6 such tests shall be conducted under the authority of this subsection, and not more than 1 such test shall be conducted under such authority in an agency.

“(b) DESIGNATION OF AGENCIES.—Each test conducted pursuant to subsection (a) shall be carried out in not more than 2 specific procuring activities in an agency designated by the Administrator. Each agency so designated shall select the procuring activities participating in the test with the approval of the Administrator and shall designate a procurement testing official who shall be responsible for the conduct and evaluation of tests within that agency.

“(c) TEST REQUIREMENTS AND LIMITATIONS.—(1) Each test conducted under subsection (a)—

“(A) shall be developed and structured by the Administrator or by the agency senior procurement executive designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 414(3)) in close coordination with the Administrator; and

“(B) shall be limited to specific programs of agencies or specific acquisitions.

“(2) The total estimated life-cycle cost to the Federal Government for each test conducted under subsection (a) may not exceed \$100,000,000.

“(3)(A) Except as provided in subparagraph (B), each contract awarded in conducting the tests under subsection (a) (including the cost of options if all options were to be exercised) may not exceed \$5,000,000.

“(B) For one of the tests conducted under subsection (a), the amount of each contract awarded in conducting the test (including options) may exceed \$5,000,000.

“(4) The program of tests conducted under subsection (a) shall include, either as a test or as part of a test, the use of the electronic commerce capability required by section 30 of the Office of Federal Procurement Policy Act [41 U.S.C. 426] for procurement actions in amounts greater than the simplified acquisition threshold.

“(d) LIMITATION ON TOTAL VALUE OF CONTRACTS UNDER PROGRAM.—(1) The Administrator shall ensure that the total amount obligated under contracts awarded pursuant to the program under this section does not exceed \$600,000,000. In calculating such amount, the Administrator shall not include any contract awarded for the test conducted by the National Aeronautics and Space Administration pursuant to section 5062 of this Act [42 U.S.C. 2473 note].

“(2) The Administrator shall monitor the value of contracts awarded pursuant to the program under this section.

“(3) No contract may be awarded under the program under this section if the award of the contract would result in obligation of more than \$600,000,000 under contracts awarded pursuant to the program under this section.

“(e) PROCEDURES AUTHORIZED.—Tests conducted under this section may include any of the following procedures:

“(1) Publication of agency needs before drafting of a solicitation.

“(2) Issuance of draft solicitations for comment.

“(3) Streamlined solicitations that specify as the evaluation factors the minimum factors necessary, require sources to submit the minimum information necessary, provide abbreviated periods for submission of offers, and specify page limitations for offers.

“(4) Limitation of source selection factors to—

“(A) cost to the Federal Government;

“(B) past experience and performance; and

“(C) quality of the content of the offer.

“(5) Evaluation of proposals by small teams of highly qualified people over a period not greater than 30 days.

“(6) Restriction of competitions to sources determined capable in a precompetition screening process, provided that the screening process affords all interested sources a fair opportunity to be considered.

“(7) Restriction of competitions to sources of pre-evaluated products, provided that the preevaluation process affords all interested sources a fair opportunity to be considered.

“(8) Alternative notice and publication requirements.

“(9) A process in which—

“(A) the competitive process is initiated by publication in the Commerce Business Daily of a notice that—

“(i) contains a synopsis of the functional and performance needs of the executive agency conducting the test, and, for purposes of guidance only, other specifications; and

“(ii) invites any interested source to submit information or samples showing the suitability of its product for meeting those needs, together with a price quotation, or, if appropriate, showing the source’s technical capability, past performance, product supportability, or other qualifications (including, as appropriate, information regarding rates and other cost-related factors);

“(B) contracting officials develop a request for proposals (including appropriate specifications and evaluation criteria) after reviewing the submissions of interested sources and, if the officials determine necessary, after consultation with those sources; and

“(C) a contract is awarded after a streamlined competition that is limited to all sources that timely provided product information in response to the notice or, if appropriate, to those sources determined most capable based on the qualification-based factors included in an invitation to submit information pursuant to subparagraph (A).

“(f) MEASURABLE TEST CRITERIA.—The Administrator shall require each agency conducting a test pursuant to subsection (a) to establish, to the maximum extent practicable, measurable criteria for evaluation of the effects of the procedure or technique to be tested.

“(g) TEST PLAN.—At least 270 days before a test may be conducted under this section, the Administrator shall—

“(1) provide a detailed test plan, including lists of any regulations that are to be waived, and any written determination under subsection (h)(1)(B) to the Committee on Government Operations [now Committee on Government Reform] of the House of Representatives and the Committee on Governmental Affairs of the Senate;

“(2) provide a copy of the plan to the appropriate authorization and appropriations committees of the House of Representatives and the Senate; and

“(3) publish the plan in the Federal Register and provide an opportunity for public comment.

“(h) WAIVER OF PROCUREMENT REGULATIONS.—(1) For purposes of a test conducted under subsection (a), the Administrator may waive—

“(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

“(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described

in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to conduct any test of any of the procedures described in subsection (e).

“(2) The provisions of law referred to in paragraph (1) are as follows:

“(A) The following provisions of title 10, United States Code:

“(i) Section 2304.

“(ii) Section 2305.

“(iii) Section 2319.

“(B) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

“(C) The following provisions of the Revised Statutes:

“(i) Section 3709 (41 U.S.C. 5).

“(ii) Section 3710 (41 U.S.C. 8).

“(iii) Section 3735 (41 U.S.C. 13).

“(D) The following provisions of the Federal Property and Administrative Services Act of 1949:

“(i) Section 303 (41 U.S.C. 253).

“(ii) Section 303A (41 U.S.C. 253a).

“(iii) Section 303B (41 U.S.C. 253b).

“(iv) Section 303C (41 U.S.C. 253c).

“(v) Section 310 (41 U.S.C. 260).

“(E) The following provisions of the Office of Federal Procurement Policy Act:

“(i) Section 4(6) (41 U.S.C. 403(6)).

“(ii) Section 18 (41 U.S.C. 416).

“(3) If the Administrator determines that the conduct of a test requires the waiver of a law not listed in paragraph (2) or requires approval of an estimated dollar amount not permitted under subsection (c)(4), the Administrator may propose legislation to authorize the waiver or grant the approval. Before proposing such legislation, the Administrator may provide and publish a test plan as described in subsection (g).

“(i) REPORT.—Not later than 6 months after completion of a test conducted under subsection (a), the Comptroller General shall submit to Congress a report for the test setting forth in detail the results of the test, including such recommendations as the Comptroller General considers appropriate.

“(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall take effect on January 1, 1997, and shall expire on January 1, 2001. A contract entered into before such authority expires in an agency pursuant to a test shall remain in effect, in accordance with the terms of the contract, the notwithstanding of expiration the authority to conduct the test under this section.

“(k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the tests conducted pursuant to subsection (a).”

#### § 414. Chief Acquisition Officers and senior procurement executives

##### (a) Establishment of agency Chief Acquisition Officers

(1)<sup>1</sup> The head of each executive agency described in section 901(b)(1) (other than the Department of Defense) or section 901(b)(2)(C) of title 31 with a Chief Financial Officer appointed or designated under section 901(a) of such title shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency, who shall—

(A) have acquisition management as that official’s primary duty; and

(B) advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency

<sup>1</sup> So in original. No par. (2) has been enacted.